

THE HONORABLE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNIVERSAL MUSIC CORPORATION,  
BLUE'S BABY MUSIC, DIRTY DRE  
MUSIC, JAT CAT MUSIC PUBLISHING,  
INC., GOO EYED MUSIC, and  
MILKSONGS,

Plaintiffs,

v.

DIVE IN, INC., TY FRANZER, and  
ANTHONY JOHNSON,

Defendants.

No. \_\_\_\_\_

COMPLAINT

Plaintiffs, by their undersigned attorneys, allege:

1. This is a suit for copyright infringement under Title 17 of the United States Code.
2. Plaintiffs allege three (3) causes of action for copyright infringement based on the Defendants' public performances of Plaintiffs' copyrighted musical compositions. SCHEDULE A, annexed to the Complaint, sets forth in summary form the allegations hereinafter made with respect to the Plaintiffs, their copyrighted musical compositions, and Defendants' acts of infringement.

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**PARTIES**

3. The Plaintiffs named in Column 2\* are the owners of the copyrights in the works listed in Column 3, and are properly joined in this Complaint under Rule 20 of the Federal Rules of Civil Procedure.

4. On information and belief, defendant Dive In, Inc. ("Dive In"), is a corporation organized under the laws of Washington, with a principal place of business at 4330 Dayton Ave. N., Seattle, Washington 98103.

5. At all times hereinafter mentioned Dive In did, and still does, own, control, manage, operate, and maintain a place of business for public entertainment, accommodation, amusement, and refreshment known as the High Dive, located at 513 North 36th Street, Seattle, Washington 98103.

6. Musical compositions were and are publicly performed at the High Dive.

7. On information and belief, defendant Ty Franzer ("Franzer") is an individual with a place of residence in Seattle, Washington.

8. On information and belief, defendant Anthony Johnson ("Johnson" and, together with Dive In and Franzer, the "Defendants").

9. On information and belief, Franzer and Johnson were, and still are, principals, directors, and/or officers of Dive In.

10. At all times hereinafter mentioned, Franzer and Johnson were, and still are, responsible for the control, management, operation, and maintenance of the affairs of Dive In.

11. At all times hereinafter mentioned, Defendants jointly had, and still have, the right and ability to supervise and control the activities that take place at the High Dive, including

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\* All references to "columns" herein refer to the numbered columns set forth in SCHEDULE A.

1 the right and ability to supervise and control the public performance of musical compositions at  
2  
3 the High Dive.  
4

5 12. Each Defendant derives a direct financial benefit from the public performance of  
6  
7 musical compositions at the High Dive.  
8  
9

## 10 11 JURISDICTION AND VENUE 12 13

14 13. This Court has jurisdiction pursuant to 28 U.S.C. § 1338(a), and venue in this  
15  
16 District is proper pursuant to 28 U.S.C. § 1400(a).  
17  
18  
19

## 20 21 FACTS AND BACKGROUND 22 23

24 14. The Plaintiffs are all members of the American Society of Composers, Authors,  
25  
26 and Publishers (“ASCAP”), a membership association that represents, licenses, and protects the  
27  
28 public performance rights of its more than 670,000 songwriter, composer, and music publisher  
29  
30 members.  
31

32 15. Each ASCAP member grants to ASCAP a non-exclusive right to license the  
33  
34 performing rights in that member’s copyrighted musical compositions. On behalf of its  
35  
36 members, ASCAP licenses public performances of its members’ musical works, collects license  
37  
38 fees associated with those performances, and distributes royalties to its members, less ASCAP’s  
39  
40 operating expenses.  
41  
42

43 16. Since March 2012, ASCAP representatives have made more than sixty (60)  
44  
45 attempts to contact the Defendants, or their representatives, agents, or employees, to offer an  
46  
47 ASCAP license for the High Dive. ASCAP has contacted Defendants by phone, by mail, by  
48  
49 email, and in person.  
50  
51

COMPLAINT (NO. \_\_\_\_\_) – 3

1 17. Defendants have refused all of ASCAP's license offers for the High Dive.

2  
3 18. ASCAP's various communications gave Defendants notice that unlicensed  
4  
5 performances of ASCAP's members' musical compositions at the High Dive constitute  
6  
7 infringement of ASCAP's members' copyrights in their musical works.  
8  
9

10 19. Notwithstanding the foregoing, Defendants have continued to present public  
11  
12 performances of ASCAP's members' copyrighted music at the High Dive, including the  
13  
14 copyrighted works involved in this action, without permission, during the hours that the High  
15  
16 Dive is open to the public for business and presenting musical entertainment.  
17  
18  
19  
20

21 **CAUSES OF ACTION**  
22 **COPYRIGHT INFRINGEMENT**  
23

24  
25 20. Plaintiff's reallege and incorporate by reference, as if fully set forth herein, the  
26  
27 allegations in paragraphs 1-19 above.  
28

29 21. Each of SCHEDULE A's three rows sets forth a cause of action for copyright  
30  
31 infringement against Defendants.  
32

33  
34 22. The original musical compositions listed in Column 3 were created and written by  
35  
36 the persons named in Column 4.  
37

38  
39 23. Each composition was published on the dates stated in Column 5, and since the  
40  
41 date of publication has been printed and published in strict conformity with Title 17 of the  
42  
43 United States Code.  
44

45  
46 24. The Plaintiffs named in each cause of action, including their predecessors in  
47  
48 interest, if any, complied in all respects with Title 17 of the United States Code, secured the  
49  
50 exclusive rights and privileges in and to the copyright of each composition listed in Column 3,  
51

COMPLAINT (NO. \_\_\_\_\_) – 4

1 and received from the Register of Copyrights a Certificate of Registration, identified as set forth  
2  
3 in Column 6.  
4

5 25. On the dates specified in Column 7, Defendants infringed the copyright in each  
6  
7 composition named in Column 3 by featuring public performances of the compositions at High  
8  
9 Dive for the entertainment and amusement of the patrons attending said premises, and Defen-  
10  
11 dants threaten to continue such infringing performances.  
12  
13

14 26. The public performances at the High Dive of the Plaintiffs' copyrighted musical  
15  
16 compositions on the dates specified in Column 7 were unauthorized: neither Defendants, nor any  
17  
18 of the Defendants' agents, servants or employees, nor any performer was licensed by, or  
19  
20 otherwise received permission from any Plaintiff, or any agent, servant, or employee of any  
21  
22 Plaintiff, to give such performances.  
23  
24

25 27. In undertaking the conduct complained of in this action, Defendants knowingly  
26  
27 and intentionally violated Plaintiffs' rights.  
28  
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30 28. The many unauthorized performances at the High Dive include the performances  
31  
32 of the three copyrighted musical compositions upon which this action is based.  
33  
34

35 29. At the times of the acts of infringement complained of, the Plaintiff named in  
36  
37 each cause of action was an owner of a valid copyright in the composition therein named.  
38  
39

40 30. The said wrongful acts of the Defendants have caused and are causing great injury  
41  
42 to the Plaintiffs, which damage cannot be accurately computed, and unless this Court restrains  
43  
44 the Defendants from the further commission of said acts, said Plaintiffs will suffer irreparable in-  
45  
46 jury, for all of which the said Plaintiffs are without any adequate remedy at law.  
47  
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49  
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51

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray:

A. That Defendants and all persons acting under the direction, control, permission, or authority of Defendants been joined and restrained permanently from publicly performing the afore-mentioned compositions -- or any of them -- and from causing or permitting the said compositions to be publicly performed at the High Dive, or in any business owned, controlled, managed, operated or conducted by Defendants, and from aiding or abetting the public performance of such compositions in any such place or otherwise.

B. That Defendants be decreed to pay such statutory damages as to the Court shall appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than Thirty Thousand Dollars (\$30,000) nor less than Seven Hundred Fifty Dollars (\$750) in each cause of action herein.

C. That Defendants be decreed to pay the costs of this action and that a reasonable attorney's fee be allowed as part of the costs.

D. For such other and further relief as may be just and equitable.

DATED this 7th day of November, 2018.

s/ Harry H. Schneider, Jr., WSBA No. 9404

s/ Heath Hyatt WSBA No. 54141

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Heath L. Hyatt, WSBA No. 54141

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**SCHEDULE A**



## Schedule A

Columns						
1	2	3	4	5	6	7
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Date of Known Infringement
1.	UNIVERSAL MUSIC CORPORATION	THE WAY	Andre Harris Jill H. Scott	July 18, 2000	PA 1-244-689	October 8, 2018
	BLUE'S BABY MUSIC					
	DIRTY DRE MUSIC					
	JAT CAT MUSIC PUBLISHING INC.					
2.	GOO EYED MUSIC	I'M YOURS	Jason Mraz	February 13, 2008	PA 1-679-602	October 8, 2018
3.	MILKSONGS	INTERSTATE LOVE SONG	Dean DeLeo Robert DeLeo Eric Kretz Scott Weiland	June 1, 1994	PA 662-909	October 8, 2018